

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

1:07cv95

HENDERSON OIL COMPANY, INC.,)
)
 Plaintiff,)
)
 Vs.)
)
 RON L. COWART,)
)
 Defendant.)
 _____)

ORDER

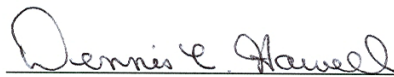
THIS MATTER is before the court on defendant's Renewed Motion for Judgment as a Matter of Law. The court has also considered plaintiff's response, in which it argues that the motion is untimely as it was filed outside the 10 day period allowed under Rule 50(b), Federal Rules of Civil Procedure. The motion was, however, filed within the provided time inasmuch as such time, being less than 11 days, is calculated under Rule 6(a). Rather than being untimely, it appears from a review of the court's notes that the motion is procedurally barred inasmuch as plaintiff, while making a motion for directed verdict at the close of plaintiff's case-in-chief, did not make a motion for judgment as a matter of law at the close of all the evidence. Inasmuch as the submission of a Rule 50(a) motion is a mandatory precondition of filing a motion to *renew* such a motion under Rule 50(b), the court will deny the defendant's Renewed Motion for Judgment as a Matter of Law. In the alternative, the court has considered the substance of the motion and can find no merit inasmuch as there was ample evidence presented that supports the jury's verdict.

Having considered defendant's motion and reviewed the pleadings, the court enters the following Order.

ORDER

IT IS, THEREFORE, ORDERED that defendant's Renewed Motion for Judgment as a Matter of Law (#56) is **DENIED** as procedurally barred and, in the alternative, is **DENIED** as ample evidence supported the jury's verdict.

Signed: March 31, 2008



Dennis L. Howell
United States Magistrate Judge

